by the plaintiff. But there was no claim of lien set up here. It was never suggested that the plaintiff was bound by any contract with his insurance company to execute such a document. I do not think that paragraph 125* in *Halsbury* (2nd Edn.) Vol. 33 at p. 74 cited by Mr. Braga helps. It seems to me that the plaintiff was absolutely entitled to have his car back once the repairs were completed and as Abbott C.J. said in *Cobbett* v. *Clutton*[2]:

"The defendants had no right to insist upon an inventory before they delivered the box. The plaintiff as executor was entitled to the possession of the papers of the deceased, and that being so he is entitled to recover in this action."

It is true that that case was laid in trover, but conversion by detention and detinue are practically identical, and the principles laid down by Abbott C.J. apply here since the plaintiff was the rightful owner of the vehicle and was entitled to the possession thereof. There can in my opinion be no question of *jus tertii* here. The defendant must plead that he did the act by the order of a third person whom he must name and he must show that such third party, (the insurance company here) had such a right. It had no such right. It may well have been a matter of prudence to demand that the plaintiff should sign a document expressing satisfaction that the work had been properly done and thereby relinquishing all further claims. But so was it a matter of prudence for the solicitors in the *Cobbett* v. *Clutton* case[2] *supra* to demand an inventory and a receipt, more especially when their client had instructed them to do so. Prudence is not enough there must be a legal right to withhold delivery, and there was none here. The plaintiff is therefore entitled to succeed in his action.

The plaintiff, requiring as he did a motor car for the efficient fulfilment of his duties at first hired a car at $10 per diem. This was established to be a reasonable figure. He found that he could not afford to pay hire charges of $300 per mensem and so he bought a new car. This was a Simca. This cost $6,550 as against a new Triumph Herald which would have cost $5,600. What therefore the plaintiff is claiming is the return of the Triumph Herald JB 499 or its value which, as it was then six months old is put at $5,000, and damages for the detention of the car which are worked out on the depreciation of the Simca. This Mr. Dunbar argued was a mitigation of damage which would have been considerably more if it were based on hire at the rate of $10 per diem. This seems to me to be fair enough. It appears to me therefore that the figure of $2,050 claimed is reasonable. But the value of the goods claimed but not returned must be assessed as at the date of judgment (see *Rosenthal* v. *Alderton & Sons*)[3] and in view of the evidence of Mr. Lee Ban Heng (who is himself a second hand motor car dealer) who put the value of a Triumph Herald at $4,500 to $4,600 after six months there must be further depreciation in view of the fact that another eighteen months have passed between the date of the accident and the date of judgment, and I would reduce the amount claimed as the value of the vehicle by $1,000 making the present value of the motor car JB 499 to be $3,600, taking Mr. Lee Ban Heng's figure of $4,600 as its correct value at the time of the accident.

There must be judgment for the plaintiff. The defendant must return the Triumph Herald JB 499 to the plaintiff forthwith or pay to the plaintiff the value thereof of $3,600, and the defendant must pay damages to the plaintiff for the detention of the said motor car amounting to $2,050. The defendant must also pay the plaintiff's taxed costs of this action.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; A. J. Braga.*

* See now para. 1330 in *Halsbury* (3rd edn.) vol. 38 at p. 799.

WEE BAN YAN v. EYUN ENG LOWI

[A. C. J. (Hashim J.) June 17, 1962]

[Kota Bharu — Civil Appeal No. 1 of 1962]

Landlord and Tenant — "Tenant" — Meaning of — When widow becomes "tenant" — Personal occupation of premises at time of husband's death — Control of Rent Ordinance, 1956, s.2.

A widow in order that she may be a "tenant" within the meaning of the Control of Rent Ordinance must be in personal occupation of the premises at the time of her husband's death.

Khadijah binti Abdullah v. *S.I.A. Alsagoff*[3] not followed.

Cases referred to:—

(1) *The Mercantile Bank of India (Trustees) Ltd.* v. *Ruth Nicholas* [1949] M.L.J. 104.

(2) *Kam Sam Mooi* v. *Shin Heong Leong* [1959] M.L.J. 249.

(3) *Khadijah bte. Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90.

CIVIL APPEAL.

A. Jayadeva for the appellant.

H. L. Wrigglesworth for the respondent.

Hashim J.: In this case the learned President gave judgment in favour of the plaintiff and ordered the defendant to vacate premises No. 112 Jalan Besar, Pasir Mas on or before February 1, 1962.

I do not propose to interfere with the learned President's finding on facts. He found the following facts:—

(a) The plaintiff, a married woman, is the owner of a shop-house No. 112 Jalan Besar, Pasir Mas.

(b) The premises were let to Chew Choon Yan at a rental of $30 monthly in 1946 and was and is still used for the purpose of a rubber dealers' business.

(c) In 1954 Chew Choon Yan married Wee Han Choo.

(d) During the marriage Chew Choon Yan and Wee Han Choo resided at No. 51 Jalan Besar Lama, Pasir Mas.

(e) The premises known as No. 112 Jalan Besar, Pasir Mas was never used by Chew Choon Yan and Wee Han Choo as a dwelling house but solely as a place of business.

(f) Chew Choon Yan died in 1956.

(g) On the death of Chew Choon Yan, his son paid the rent in respect of premises No. 112 Jalan Besar, Pasir Mas.

(h) In December 1959 plaintiff discovered that defendant was occupying premises No. 112 Jalan Besar, Pasir Mas. Defendant is the father of Chew Choon Yan's widow, Wee Han Choo. The father is the defendant in this case. He is a rubber dealer carrying on business at No. 112 Jalan Besar, Pasir Mas.

(i) On December 19, 1959 a notice to quit was sent on defendant.

The question for determination in this appeal is whether Wee Han Choo was the "tenant" of premises No. 112 Jalan Besar, Pasir Mas on the death of her husband Chew Choon Yan. "Tenant" as defined in the Ordinance means *inter alia* "the tenant of premises in respect of which a tenancy exists and includes a statutory tenant and the widow of the tenant who was residing with him at the time of his death". It is a fact that the widow Wee Han Choo was residing with her husband at No. 51 Jalan Pasar Lama, Pasir Mas at the time of his death. It is also a fact that the son of the deceased was occupying premises No. 112 Jalan Besar, Pasir Mas at the time of his death but ceased to occupy the premises in December 1959. Mr. Jayadeva for the appellant (the father of Wee Han Choo) argued that Wee Han Choo was the tenant of premises No. 112 Jalan Besar, Pasir Mas at the time of her husband's death as she was then residing with him. He further argued that the word "premises" in the definition of "tenant" did not indicate any particular premises and that so long as the wife was residing with her husband she became a tenant on his death of all the premises of which the husband was a tenant. I am unable to accept this view. The definition of "tenant" is quite clear. It means "the tenant of premises in respect of which a tenancy exists" and in this case the tenancy is in respect of premises No. 112 Jalan Besar, Pasir Mas. Mr. Jayadeva also contended that Wee Han Choo was in occupation of premises No. 112, Jalan Besar, Pasir Mas on the death of her husband. He based this contention on the authority of *The Mercantile Bank of India (Trustees) Ltd.* v. *Ruth Nicholas*[1] and *Kam Sam Mooi (f)* v. *Shin Heong Leong (f)*[2]. I do not think these cases are relevant. The facts in these two cases are entirely different. Mr. Jayadeva also referred to *Khadijah binti Abdullah* v. *S. I. A. Alsagoff*[3]. This is a Singapore case and therefore not binding on this Court. Furthermore the Singapore Ordinance is not identical with the Federation Ordinance. In any case I do not think this case is relevant.

I hold that the widow Wee Han Choo never resided with her husband at No. 112 Jalan Besar, Pasir Mas and was never personally in occupation of the said premises and therefore she was not a "tenant" of the said premises at the time of her husband's death.

The appeal is therefore dismissed with costs.

Appeal dismissed.

Solicitors: *Jayadeva & Zahir; H. L. Wrigglesworth & Co.*

ZUBAIDAH v. ZULKATHAR

[O. C. J. (Adams J.) June 30. 1962]

[Muar — Civil Suit No. 31 of 1961]

Contract — Agreement entered into after holding of panchayatt — Breach of condition, as to time of repayment — Defendant's 1/3rd equitable interest in land held in trust by plaintiff — Action for declaration that right to and interest of defendant in land had ceased — Contracts (Malay States) Ordinance, 1950, s.74.*

Land Laws — Equitable interest in land held in trust — Action for declaration of cesser of rights and interest.

The plaintiff was the registered owner of a piece of land. In 1943 for reasons which were not known the defendant (the plaintiff's brother) became the beneficial owner of a third undivided share in the land, but the defendant's interest was never registered. In 1956 a shophouse was erected on the land financed by a loan from a bank on the security of the land. The defendant was to have a one third share in the shophouse and the defendant agreed to bear responsibility for $3,500 towards his share of the shophouse. The plaintiff and her husband were to have the remaining two thirds share. The plaintiff subsequently began to press for money and as a result a *panchayatt* was held and some form of settlement of the financial transaction relating to the erection of the shophouse was reached. Subsequently an agreement was entered into by the plaintiff, her husband and the defendant by which the plaintiff agreed to pay off the defendant's debt with one C and his liability to the bank in consideration of a charge over the defendant's share in the property. The defendant was to forfeit his rights in the land if he did not pay off within three years. On the defendant being unable to repay towards the bank loan the plaintiff commenced proceedings seeking declarations that the rights to and interest of the defendant in the land have ceased and that the plaintiff is the absolute owner of the land and building thereof. The plaintiff also asked for an order to amend the Land Register by expunging the name of the defendant as being a joint owner of the building and by substituting her name as absolute owner thereof.

Held: (1) the only interest that the defendant had in the land and building was an equitable one, i.e. the plaintiff held the property as to one undivided third share in trust for the defendant;

(2) it was unconscionable to permit the plaintiff to obtain possession of the defendant's share, which was worth much more, merely because he had not been able to repay towards the bank loan.

Case referred to:—

(1) *Dwarika* v. *Bagawati* A.I.R. 1939 Rangoon 413.

* An assembly of men to try all disputes.